IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8399 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UDESINH CHHOTUSINH THAKOR & 1 - Petitioner(s)
Versus
KARANBHAI JAGABHAI & 3 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1,1.2.1 - 2.
None for Respondent(s) : 1,
MR JITENDRA M PATEL for Respondent(s) : 1.2.1, 1.2.2,1.2.3 - 3.
MS.NISHA M PARIKH, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/04/2007

ORAL JUDGMENT

1. Heard the learned counsel for the parties.

2. Petitioner no.1 Smt. Laxmiben Gumansing Thakor,

aged woman of 72 years succeeded the land of block no. 215 situated at Kachi gam. Since after her marriage, she was residing at village Segva. The petitioner no. 1 entered into an agreement to sell the said land to the petitioner no. 2 and his brother in June, 1986 and handed over possession of the land in question. The petitioner no.1 thereafter executed sale deed in favour of the petitioner no. 2 and his brother somewhere in June,1991. Respondents made an application on 9.10.89 under Section 70[b] of the Bombay Tenancy & Agricultural Lands Act, 1948. The Mamlatdar, Valsad, vide his order dated 27.5.91 dismissed the application, but Appeal No.47/91 filed at the instance of the respondent was allowed by the Deputy Collector vide his order dated 30.10.92 and the matter was remanded back to the Mamlatdar with a direction to decide the issues suggested by the Deputy Collector.

3. The petitioner no. 2 and his brother filed Regular Civil Suit in the court of Civil Judge [Senior Division], Valsad for permanent

injunction restraining the respondents from interfering with possession over the land. Ad-interim injunction was granted by the Civil Court and appeal filed by the respondents was dismissed. After the remand was made by the Deputy Collector, the Mamlatdar cum ALT vide his order dated 20.5.95 declared the respondents as tenants. The petitioners no.1 and 2 preferred an appeal before the Deputy Collector, who vide his order dated 29.1.96 allowed the appeal after setting the order passed by the Mamlatdar cum ALT.

4. A revision at the instance of the respondents was filed before the Revenue Tribunal, who, by its order dated 9.6.99 set aside the orders passed by the Deputy Collector and the Mamlatdar and remanded the matter back to the Mamlatdar cum ALT for holding an inquiry afresh. The petitioners are now before this Court.

5. After hearing the learned counsel for the parties and on going through the order passed by the Mamlatdar cum ALT, I must hold that the order of remand passed by the Revenue Tribunal

is in accordance with law. The Tribunal has given valid reasons for setting aside both the orders. From the order passed by the Tribunal, it would clearly appear that the Tribunal wanted the Mamlatdar cum ALT to see that whether in view of the age of the petitioner no. 1, the respondents would become tenants and whether, in fact, they have acquired tenancy rights. In the considered opinion of this Court, the petitioners cannot be allowed to say that the order of remand would cause injustice to them. In fact, by order of remand, the Revenue Tribunal has remanded the matter to the trial court for trial afresh so that the parties get appropriate opportunity to lead evidence and submit their case before the Mamlatdar.

6. I find no reason to interfere in the matter. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

pirzada/-